

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**MELVA ROGERS, Natural Parent of)
DERAVIS CAINE ROGERS, Deceased)
)
Plaintiff,)
)
v.)
)
CITY OF ATLANTA, et al.)
)
Defendant.)**

**CIVIL ACTION
FILE NO.1:16-cv-2578**

**DEFENDANT BURNS' MOTION TO STAY CIVIL ACTION
PENDING RESOLUTION OF CRIMINAL PROCEEDINGS**

COMES NOW Defendant James Burns (hereinafter "Defendant" or "Burns"), by and through his attorney, and files this his MOTION TO STAY CIVIL ACTION PENDING RESOLUTION OF CRIMINAL PROCEEDINGS, and shows the Court as follows:

1.

Plaintiff filed the above-styled case on or about July 18, 2016. The Return of Service shows Defendant Burns was served on July 21, 2016. The parties stipulated that Defendant Burns may have through and including September 19, 2016 to file his Answer.

2.

The factual allegations of the Complaint arise from an incident that occurred on June 22, 2016.

3.

On August 31, 2016, a grand jury indicted Defendant Burns, and the investigation by the Fulton County District Attorney's Office in connection with the criminal charges is still ongoing.

4.

Because of the nature of the Complaint herein, the parties can be expected to conduct extensive discovery of underlying evidence, information, and facts that overlap with the ongoing investigation and prosecution of the pending criminal action.

5.

Because of this overlap, Defendant Burns hereby moves the Court for an order staying this civil action as against Defendant pending resolution of the indictment and attendant criminal proceeding at *The State of Georgia v. James Burns*, Fulton County Superior Court Case No. 16SC146204.

6.

This Motion is made on the grounds that a stay of this civil action is necessary to protect Mr. Burns' Fifth Amendment rights in connection with the above-referenced criminal proceeding, which arises from the same underlying facts as the civil action.

7.

The Motion is also based on the substantial and legitimate question regarding the constitutionality and the propriety of the grand jury process that ultimately returned an indictment against the Defendant. See attached to the Brief in Support as Exhibit 1, *Defendant's Motion to Quash Indictment*, filed in the criminal matter on September 16, 2016 (and attaching as Exhibit B thereto, *Defendant's Emergency Motion to Continue the Grand Jury Proceeding due to the Lack of the Proceeding and Undue Influence by Outside Sources*, filed in the criminal matter on August 30, 2016).

8.

This Motion is based on and supported by the accompanying Brief in Support, filed contemporaneously herewith, and incorporated herein by reference.

WHEREFORE, Defendant, JAMES BURNS, prays that this Honorable Court enter an Order granting this Motion, staying the civil action

pending the resolution of the above-referenced criminal proceedings, and for any other relief this Court deems just and fit.

Respectfully submitted,

/s/ Mary A. Prebula

Mary A. Prebula

Georgia Bar No. 586743

PREBULA & ASSOCIATES LLC

Suite 200 The Crescent Building

3483 Satellite Boulevard, N.W.

Duluth, Georgia 30096

(770) 495-9090; (770) 497-2363 fax

mprebula@prebulallc.com

Attorney for Defendant

M:\Documents\Burns\MOB\2016 0919 Motion to Stay Proceedings.docx

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed **DEFENDANT JAMES BURNS' MOTION TO STAY CIVIL ACTION PENDING RESOLUTION OF CRIMINAL PROCEEDINGS** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Shean D. Williams, Esquire
Samuel L. Starks, Esq.
The Cochran Firm Atlanta
The Equitable Building
100 Peachtree Street, Ste. 2500
Atlanta, GA 30303
SWilliams@cochranfirmatl.com
SStarks@cochranfirmatl.com

Robert N. Godfrey, Esq.
Tamara N. Baines, Esq.
City of Atlanta Law Department
55 Trinity Avenue, Suite 5000
Atlanta, Georgia 30303-3520
Tbaines@atlantaga.gov

This 19th day of September, 2016.

/s/ Mary A. Prebula
Mary A. Prebula
Georgia Bar No. 586743
PREBULA & ASSOCIATES LLC
Suite 200 The Crescent Building
3483 Satellite Boulevard, N.W.
Duluth, Georgia 30096-5800
(770) 495-9090 phone
(770) 497-2363 fax
ATTORNEY FOR DEFENDANT
mprebula@prebulallc.com

M:\Documents\Burns\MOB\2016 0919 Motion to Stay Proceedings.docx